# The Solicitors' Journal

VOL. LXXVI. **Saturday, May 14, 1932.** No. 20



## Current Topics.

### The Report on Ministers' Powers.

THE NEED for the protection of the private citizen against the inroads made by the Executive and the Civil Service on the powers of the Legislature and the Judiciary has for many years been the subject of deep anxiety on the part of all thinking people. An important step towards reinstating "the rule of law" was made when the LORD CHANCELLOR appointed a Committee on Ministers' Powers, in October, 1929, "to consider the powers exercised by or under the direction of (or by persons or bodies appointed specially by) Ministers of the Crown by way of (*a*) delegated legislation, and (*b*) judicial or quasi-judicial decision, and to report what safeguards are desirable or necessary to secure the constitutional principles of the sovereignty of Parliament and the supremacy of the Law." The Committee sat first under the chairmanship of Lord DONOUGHMORE, and later of Sir LESLIE SCOTT, K.C., and comprised, among others, such distinguished members as Sir WILLIAM HOLDSWORTH, K.C., Sir ELLIS HUME-WILLIAMS, K.C., Mr. H. J. LASKI, Mr. GAVIN SIMONDS, K.C., Dr. E. L. BURGIN, M.P., and Sir JOHN WITHERS, M.P. In its Report, issued on 6th May, the Committee found that the delegation of legislative powers is legitimate for certain purposes and within certain limits, and, in fact, inevitable, but expressed a hope that Parliament would not depart from the normal into the exceptional type of delegated legislation without special need. Parliament, says the Report, should, in all but the most exceptional cases, be careful to preserve the jurisdiction of courts of law to decide whether a Minister, in purporting to act under powers given to him by Parliament, has in fact acted within the limits of those powers. The present procedure by writs of *certiorari*, prohibition and *mandamus* is characterised by the Report as "archaic, cumbrous, inelastic and expensive." The assignment of judicial functions to a Minister or Ministerial Tribunal should be regarded as exceptional, and before any decision, judicial or quasi-judicial, is given, each of the parties to a dispute should be given the opportunity of stating his case (not necessarily orally) and answering the opposing case. Reasoned decisions should always be given and the practice of the Ministry of Health in publishing summaries of leading cases for public guidance should be generally adopted. Any party aggrieved by such a judicial decision should have an absolute right of appeal to the High Court of Justice on any questions of law, and there should be a uniform and simple procedure for the exercise of such a right. The responsibility for our being saddled with the prolific legislation of recent years, and what the Report calls the "heterogeneous collection of regulations, rules and orders," must rest with our increasingly complicated economic system, and, as the Report states, delegation of legislative powers was inevitable. It was also perhaps inevitable that great judicial authorities like Lord HEWART should rebel against the tendency to deprive the citizen of his ancient rights, and it is to be hoped that the result of this Report will be that the old will be called in "to redress the balance" of the New Despotism.

### Arrests by Private Persons.

THE CHIEF CONSTABLE of Reigate has invited local householders to co-operate with his forces in suppressing the prevalent epidemic of housebreaking. We cannot say that we consider the invitation a confession of failure, for we have little sympathy with those who complain of the absence of a policeman when a crime has been committed, a factor to which some consideration is no doubt paid by a prudent criminal. But perhaps the Chief Constable might have added a warning, addressed to those householders whose zeal may outrun their discretion, to refrain from over-hasty action. For while housebreaking is a felony and private persons have a right of arrest, the right only exists when the offence has been committed or is being actually attempted; it is only peace officers who may arrest on suspicion. And damages awarded for false imprisonment are usually heavy! The term "peace officer," incidentally, includes sheriff; and presumably a private person would be safe when acting under the sheriff's orders. For the ancient right of the sheriff to call upon private individuals to assist him is preserved by the Sheriffs Act, 1887; by s. 8 (1) "Every person in a county shall be ready and apparelled at the command of the sheriff and at the cry of the country to arrest a felon . . . and in default on conviction shall be liable to a fine."

### Deduction of Property Tax under Schedule A.

IN A case where an occupying leaseholder or tenant at a rack-rent holds directly from the freeholder there can be no question but that the incidence of income or property tax under Sched. A falls within r. 1 of No. VIII of that schedule. Accordingly, in the normal case where the tenant pays on the quarter-days he will deduct from the rent due at Lady-day the whole of the tax due on 1st January, if paid by him on or soon after that date. When income tax is at five shillings in the pound, its deplorable rate at the present moment, this means that, on production of the receipt for the tax (which production is in practice almost invariably waived) the tenant need pay no rent till Midsummer, when he pays the quarterly rent in full, as he does at Michaelmas or Christmas. If a sub-lessee is in occupation, however, the claim is made that the immediate lessee from the freeholder, or, indeed, any mesne lessee, not being a "tenant occupier" within r. 1, cannot bring his case within that rule, but, coming under r. 4, must deduct only the proportionate tax on the payment actually made. Indeed, leaseholders at a ground-rent being in the vast majority of cases themselves landlords of tenants at a rack-rent, or, at least, an improved rent, the practice has become fairly general of demanding each quarterly ground rent with its own deduction only. It is submitted that,

where the tenant is in actual occupation this practice cannot be defended, however small a proportion the rent he actually pays may be of the rack-rent. The case as to mesne landlords is, however, more open. The second proviso of r. 1 refers to "tenant or occupier" disjunctively, which, it may be argued, is entirely inconsistent with the interpretation that the occupier alone can be the "tenant" within r. 1. On the other hand, the definition of "annual sum" in r. 4 (2) expressly includes rent, and, in *Rossdale* v. *Fryer* [1922] 2 K.B. 303, the mesne landlord was treated in the Divisional Court, if not in the Court of Appeal, as coming under r. 4 and not r. 1. So far as r. 4 relates to mortgage interest, etc., deduction is only made in respect of the actual sum paid on any particular occasion. The point as to the mode of deduction to be made by a mesne landlord does not appear to have been directly tested, and, indeed, would hardly be worth the expense of a test action in the ordinary case, the issue involving nominal interest on the amount of the tax for a few months only.

### The Child and the Dog in the Car.

A NEW complication of the now familiar question of the "dog in the car" arose in *Sycamore* v. *Ley*, in which Mr. Justice DU PARCQ dismissed an application by the defendant for judgment on 25th April, after a disagreement by the jury (*The Times*, 26th April). The infant plaintiff claimed damages for injuries resulting from a bite by the defendant's dog which had been left tied up in the latter's car. The car was stationary outside the house where the infant plaintiff lived, and the latter had run out of the house with another child and leaned over the car to look at the dog, which then snapped at her and bit her. The jury had been in disagreement as to whether the dog was ferocious or whether the defendant was aware of its ferociousness, or whether the defendant was negligent. They found unanimously, however, against contributory negligence on the part of the plaintiff. His lordship, in holding that the action must remain as one in which the jury had been unable to agree, said that the evidence of ferocity was very slight and might be ignored, but that it was possible for the jury to find that the defendant knew that he was leaving in the car a dog which if approached or teased in the position where it was, would be likely to bite, and that therefore he ought to have foreseen what occurred. His lordship quoted Lord Justice HAMILTON in *Latham* v. *Johnson* [1913] 1 K.B. 398, where he said that the owner of an object of attraction left in a frequented place may be fully liable for injuries to a child too young to be capable of contributory negligence, "if he ought as a reasonable man, to have anticipated the presence of the child and the attractiveness and peril of the object." It will be recalled that the Court of Appeal recently held, in *Fardon* v. *Harcourt-Rivington* (*The Times*, 30th October, 1930) on which we commented (74 SOL. J. 445 and 746), that it was not negligence to park a car leaving inside a dog which was not ferocious. It will be remembered that the car in that case was locked, but that the negligence alleged was that the dog was not tied up in a secure manner. In *Sycamore* v. *Ley*, however, the added element was present of the possibility of a child's interference, and therefore there was clearly a case to go to the jury.

### An Unusual Condition.

THE WILL of Mr. C. A. T. PRIDEAUX, a barrister who died in 1930, contained the following clause: "I give the following gifts on the condition of no person interested ever eating *foie gras*, or any crab, eel, crayfish, lobster, prawn, shrimp, or any shelled or other animal or creature without absolute proof of humane death or killing of such creature before cooking and with the least possible pain, or ever wearing any feather, skin or form or part of any form of any bird or other animal as ornament or as trimming"—with a gift over on breach. LUXMOORE, J., had of course no difficulty in deciding that this, as a condition subsequent, was repugnant to the absolute gifts, and therefore void. Counsel for the trustees suggested that it was an impossible condition. It was not necessary for the judge to decide the latter point, but, had the interests in question been life interests, counsel for those taking in breach of the condition should have had plenty to say to uphold its validity. In the first place, it is possible to subsist without eating *foie gras*, crab, eel, crayfish, lobster, prawn or even shrimp. A nice question might arise on the *ejusdem generis* rule as to "or other animal or creature," but presumably a vegetarian would surmount all difficulties. Moreover, even a shell-fish gourmand might observe the condition if he earmarked and followed each crab destined for his consumption from the sea to its humane lethal chamber in the pot, which might be a tedious but would not be an impossible task. Presumably also he could exhibit his leather boots to a judge with well-founded confidence that his lordship would hold that, though animal skin, they were neither ornamental nor in any sense a trimming. He would of course have to eschew the habit, derived from Austria through our Edwardian ancestors, of wearing game feathers in a Tyrolean hat. Possibly he could have a little sport with the hungry residuaries by wearing artificial feathers; or they in their turn could suborn his cook and make affidavit of the lobster's cries of remonstrance as the temperature in the pot rose from zero to boiling point.

### Punishment for Bigamy.

AT THE Old Bailey recently a prisoner pleaded guilty to bigamy. It appeared that he had gone through the second ceremony with a widow, and thereafter kept establishments both for her and his wife, telling the latter, when about to visit the former, that he had some night work to do. The wife testified that she was ready to take the man back, and the widow, apparently with a little reluctance, was ready to give him up. The Recorder said that the prisoner had five children to support, and would shortly have two more. He did not see that he would be doing any good to the community by sending him to prison, so bound him over. This method of dealing with the case is, perhaps, worth comment. The offence of bigamy is dealt with by our law in s. 57 of the Offences Against the Person Act, 1861. It is regarded as a serious one, being made felony, with a possible punishment of seven years' penal servitude. A cat burglar or motor bandit might have five children and be expecting more, but it is hardly to be supposed that the Recorder or any other judge would bind him over and let him go free on that account. The Recorder's action in this case by no means stands by itself, and the inference may, perhaps, be made that bigamy is not now regarded by our judges as necessarily a serious offence. It may be suggested that the difficulty experienced by some people in obtaining divorce tends to make them contract bigamous marriages, so that the woman may have her "lines," though obtained under false pretences. In such cases judges may, perhaps, have considered the choice between life-long celibacy and unlawful concubinage an unreasonable one, and been indulgent to these lawbreakers. No such excuse could be made for the man in question, however, and if bigamists of this kind are to be let off punishment, the law's treatment of the offence as a serious one should be reconsidered. When the second woman is a spinster, and has been deceived into the belief that the man is a bachelor or widower, the offence ought surely to be regarded as serious, and punished accordingly. Where the second woman goes through the ceremony knowing the fact that the man is already validly married to another woman, or where the woman has a living husband, the offence is principally one against good morals. In such cases, no particular person has been so deeply injured as when the woman is deceived, though the children of all such unions receive the stigma of illegitimacy from their parents, which, in the present state of the law, can never be blotted out. If, however, bigamy is to be treated as a minor offence, it should cease to be felony.

# Criminal Law and Practice.

RE-HEARING A BASTARDY CASE.—There is a certain amount of misapprehension as to the rights of a woman seeking an affiliation order when her first application is dismissed, and it is worth while to consider the cases dealing with the matter.

If the original application has been made in time and is dismissed on a technical ground, and not on the merits, a second summons can be issued on the original information, though the time may have run out for a fresh application. There has been no hearing and the information is therefore not exhausted.

There can be a second hearing on the merits, only upon a new application, against which the statutory time limit will run in the ordinary way. It has been asserted that there can be a second trial where the only evidence available is that which was given at the first, and the case of *R.* v. *Hall and Gillespie* (1887), 57 L.T. 306, is cited as authority for this proposition. It is true the head-note baldly asserts that a dismissal on the merits is no bar to the jurisdiction of the justices to entertain a fresh application, but, in fact, in that case, it was a question of further corroboration, and without this qualification the head-note is misleading.

*R.* v. *Gloucestershire JJ.* (1849), 3 New Mag. Cas. 198, or as it is often cited *R.* v. *Machen*, 14 Q.B. 74, is the foundation of the authority that a dismissal is "in the nature of a non-suit," and though the dismissal is not to be treated as of no weight, it does not bar a new application on the merits. That case has been argued over many times; it is not even clear whether the dismissal was for insufficient corroboration, or more definitely on the whole merits. The case was discussed and used in *R.* v. *Harrington* (1864), 3 W.R. 468; *R.* v. *Gaunt* (1867), L.R. 2 Q.B. 466; and *McGregor* v. *Telford* [1915] 3 K.B. 237. The net result of all the cases and the views of the various judges seems to be that a re-hearing on the merits is in order, but the earlier dismissal ought to be treated as conclusive, unless there is some further evidence. This is the view expressed by the editor of "Lushington's Affiliation and Bastardy," after summarising and discussing all the decisions in point.

It is submitted that the further evidence need not be "fresh" evidence in the technical sense of that word as used in the Summary Jurisdiction (Separation and Maintenance) Acts, and defined in the cases which turned upon the meaning of the expression. Those cases are considered in Lieck and Morrison's "Matrimonial Jurisdiction of Justices," at p. 109; to them must be added *R.* v. *Copestake* (1926), 90 J.P. 191, and *Cross* v. *Cross* (1931), 95 J.P. 86. "Fresh" evidence, in the strict legal sense of the term, must relate to something which has happened subsequently to the hearing, or be evidence not in possession of the applicant at the time of the trial, and it must be of sufficient importance to have affected the result of the original hearing had it been available.

There is no provision in the Bastardy Acts for a new trial, consequently there is no statutory provision which uses such a term of art as "fresh evidence." The husband and wife cases mentioned above are all beside the point, for nowhere in the series of bastardy cases is it even hinted that there is any similar limitation as respects a second application for an affiliation order. The woman seems to be definitely entitled to a second shot if she can find any additional ammunition. Seeing how hardly the technicality works in some married women's cases, it is not to be regretted that it is absent from affiliation cases.

The most common ground for a new hearing is the availability of additional evidence corroborating the applicant's story. Even if the summons be withdrawn because such evidence is lacking at that time, there is no estoppel of a further application: *R.* v. *Seddon; ex parte Hall* (1916), 85 L.J. K.B. 806. There a second application was dismissed by justices who mistakenly applied *Pickavance* v. *Pickavance* [1901] P. 60, a decision in a husband and wife case not really in point, and not very satisfactory even on its own ground.

It must not be forgotten that, in all cases but that of failure on a pure technicality, it is a new application that is allowed, not a new summons on the old application, and for this reason, when time is running short, counsel for the applicant who expects to obtain further evidence should press for an adjournment, rather than accept a dismissal with liberty to apply again.

A decision of quarter sessions against the woman is final, even where the order is quashed solely on the grounds of absence of corroboration: *R.* v. *Glynne* (1871), L.R. 7 Q.B. 16; but where there has been no hearing on appeal a fresh application to justices in petty sessions is not barred: *R.* v. *Moy* (1880), 5 Q.B.D. 382.

# Legal Maxims.

*VOLENTI NON FIT INJURIA.*

"ONE who has invited or assented to an act being done towards him cannot, when he suffers from it, complain of it as a wrong": per Lord HERSCHELL in *Smith* v. *Baker* [1891] A.C. at p. 360. The "assent" may be express or implied from the surrounding circumstances.

The maxim—*volenti non fit injuria*—applies not only to intentional wrongs such as trespass, but also to cases of "consent to run the risk of accidental harm which would otherwise be actionable as due to the negligence of him who caused it." But its application to certain cases where the act complained of constitutes both a tort and a crime is a matter of considerable doubt. The point has never been expressly decided, and the doubt is such that the learned authors of "Salmond's Torts" and "Pollock's Torts" take opposite views: see "Salmond," 7th ed., at p. 59, and "Pollock," 12th ed., at p. 160. HAWKINS, J., in *R.* v. *Coney* (1882), 8 Q.B.D., at p. 553, expressed his doubt upon the point, but his dictum was *obiter*. He said: "It may be that consent can in all cases be given so as to operate as a bar to a civil action; upon the ground that no man can claim damages for an act to which he himself was an assenting party. . . . It is not necessary, however, upon the present occasion to express any decided opinion upon the point; for, whatever may be the effect of a consent in a suit between party and party, it is not in the power of any man to give an effectual consent to that which amounts to, or has a direct tendency to create, a breach of the peace; so as to bar a criminal prosecution." It is to be observed that in certain criminal offences consent is a good defence, e.g., rape.

The difficulty of deciding, in a case where express consent is absent, whether the maxim applies lies in the interpretation of the term "*volenti*."

"The maxim, be it observed, is not '*scienti non fit injuria*,' but '*volenti*'": per BOWEN, L.J., in *Thomas* v. *Quartermaine* (1887), 18 Q.B.D. at p. 696. LORD SHAW OF DUNFERMLINE delivering the judgment of the Privy Council in *Letang* v. *Ottawa Electric Railway Co.* [1926] A.C. 725, adopted the dictum of BOWEN, L.J., and said: "It is quite a mistake to treat *volenti non fit injuria* as if it were the legal equipollent of *scienti non fit injuria*." But, though knowledge is not of itself a conclusive defence, it affords, together with other circumstances, evidence upon which a jury may find that the risk was voluntarily encountered. In *Letang's Case*, Lord SHAW said: "The law of . . . England seems to be summed up in the leading proposition to WILLS, J.'s, judgment (in *Osborne* v. *L. & N.W. Railway Co.*, 21 Q.B.D. 220): 'If the defendants desire to succeed on the ground that the maxim . . . is applicable, they must obtain a finding of fact that the plaintiff freely and voluntarily, with full knowledge of the

nature and extent of the risk he ran, impliedly agreed to incur it.' "

The leading case of *Smith* v. *Baker* [1891] A.C. 325, illustrates the force of these dicta. The plaintiff was employed by the defendants to drill holes in a rock cutting near a crane worked by men in their employ. The crane lifted stones and at times swung them over the plaintiff's head without warning. The plaintiff had worked there for months with full knowledge of the fact that he was exposed to danger by reason of the negligent practice of the defendants in swinging stones over their quarrymen's heads without warning. A stone having fallen and injured the plaintiff, he sued the defendants under the Employers' Liability Act, 1880. The defence of *volenti non fit injuria* is open to an employer under this Act, but the House of Lords (Lord BRAMWELL dissenting) held that the mere fact that the plaintiff undertook and continued in the employment with full knowledge and understanding of the danger did not preclude him from recovering.

The consent necessary to establish the defence of *volenti non fit injuria* must be consent to suffer the particular act or run the particular risk. A person using a busy street runs the risk of injury by negligent driving, but this is a general risk, and consent to take it will not preclude him from recovering. " I am of opinion myself, that in order to defeat a plaintiff's right by the application of the maxim relied on, who would otherwise be entitled to recover, the jury ought to be able to affirm that he consented to the particular thing being done which would involve the risk, and consented to take the risk upon himself " : per Lord HALSBURY, L.C., in *Smith* v. *Baker*, at p. 338. But, though Lord HALSBURY emphasised this point, he qualified it in these words : " Of course, I do not mean to deny that a consent to the particular thing may be inferred from the course of conduct, as well as proved by express consent."

Even knowledge which falls short of implied consent may afford a defence to an action based on negligence. " I venture to agree, however, with the useful observations of Sir JOHN SALMOND in his work on ' Torts,' 5th ed., p. 58, when he says : ' Knowledge of the danger, even if it does not prove an agreement to take the risk within the rule in *Smith* v. *Baker*, may nevertheless be a bar to the plaintiff's action for two other reasons : (*a*) It may negative the existence of any negligence on the part of the defendant in causing that danger ; (*b*) it may establish the existence of contributory negligence on the part of the plaintiff ' " : per MCCARDIE, J., in *Baker* v. *James* [1921] 2 K.B. 674, at p. 684.

The duty of an occupier of premises to a licensee is to warn him of concealed dangers of which he (the occupier) knows. The term " concealed danger " means a danger " which is not known to the licensee or obvious to the licensee using reasonable care " : per Lord WRENBURY in *Fairman* v. *Perpetual Investment Building Society* [1923] A.C., at p. 96. If, therefore, a licensee knows of a danger but runs the risk of injury from it, he cannot complain.

The defences of *volenti non fit injuria* and contributory negligence must be distinguished. When the former is established, the defendant is released from the duty which, were it not for the maxim, he would owe to the plaintiff. The latter is available when the defendant is guilty of a breach of a duty owed by him to the plaintiff, but the plaintiff has brought the injury on himself by his own negligence. " Contributory negligence arises when there has been a breach of duty on the defendant's part, not where *ex hypothesi* there has been none . . . the doctrine of *volenti non fit injuria* stands outside the defence of contributory negligence and is in no way limited by it " : per BOWEN, L.J., in *Thomas* v. *Quartermaine*, at p. 697. A person may exercise all reasonable care and diligence to avoid, and yet be precluded from recovering because he has consented to run the risk of, an injury.

The question whether the maxim applies is one of fact. In *Thomas* v. *Quartermaine*, the Court of Appeal decided as a matter of law that the plaintiff failed because of the maxim. Later decisions have shown, however, that it is a matter of fact. In *Yarmouth* v. *France* (1887), 19 Q.B.D., at p. 659, LINDLEY, L.J., said : " The question whether in any particular case a plaintiff was *volens* or *nolens* is a question of fact, and not of law." In *Smith* v. *Baker*, Lord HERSCHELL, referring to the decision in *Thomas* v. *Quartermaine*, said : " The learned judges, however, came to the conclusion that the defendant was entitled to judgment, because the maxim . . . applied, the county court judge having found that the condition of the vat was known to the plaintiff as well as to the defendant. I find myself unable to concur in the view that this could properly be held under the circumstances as matter of law."

# Costs.

## ALLOWANCES FOR WITNESSES.

[CONTRIBUTED.]

THE allowance on taxation for the attendance of witnesses on the trial of an action causes some little difficulty at times. Order 65, r. 27 (9), provides, " as to evidence, such just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence and the attendance of witnesses, are to be allowed."

It will be observed that the taxing master has a wide discretion here as to the sums that shall be allowed to witnesses. There is no fixed scale of fees by which he is bound and he must have regard to the social or professional standing of the witness, the time occupied, and whether or not the witness has been compelled to travel some distance to the place of trial. A scale of allowances was laid down by the Common Law Procedure Act, 1852, but this is no longer binding on a taxing master : see *East Stonehouse Local Brewery* [1895] 2 Ch. 514.

The sum to be allowed to a witness will include compensation for his loss of time, travelling expenses, and a sum to cover maintenance in those cases where the witness is compelled to remain away from his own residence. No allowance will be granted by way of compensation for loss of business profits : see *Nokes* v. *Gibbon*, 5 W.R. 216, but this rule is not strictly adhered to on the Admiralty side, and it is customary to assess the allowance for pilots who attend a trial on the basis of the " turns " which they have missed.

Travelling expenses are allowed having regard to the social status of the witness. It was formerly the practice to allow a maximum of one shilling a mile each way, but this has now fallen into disuse, owing to changed economic conditions, and the actual cost of travelling will now be allowed consistent with the social position of the witness. Thus, whilst it would not be possible to get more than the ordinary third-class fare allowed for the members of a ship's crew travelling from a port to London for the trial of an action, it is customary to allow the ship's officers the cost of first-class travel. Here again, the social status of the witness must be taken into account, and the masters respectively of an ocean liner and a small tramp steamer would not be allowed the same travelling expenses for the same journey. An auctioneer was held to be entitled to first-class travelling expenses : see *Wiltshire* v. *Marshall*, (1866), W.N. 80.

The allowance for maintenance is again regulated by the social status of the witness. Reasonable maintenance expenses are allowed, and in the case of *Wiltshire* v. *Marshall*, *supra*, an auctioneer was allowed two guineas a day.

It is the social or professional status of the witness that is to be taken into account and not the nature of the evidence that he is called upon to give. Thus, a professional man will be

allowed his expenses, etc., as a professional man, notwithstanding that he does not give professional evidence: see *Parkinson* v. *Atkinson*, 31 L.J. C.P. 199.

It was decided in the case of *London Chatham & Dover Railway* v. *South Eastern Ry.*, 60 L.T. 370, that the evidence used in court was not necessarily the limit of evidence, the cost of which is to be allowed as between party and party; and it follows that the expenses, etc., of witnesses who are not called may be recovered on taxation. In fact, the taxing master has discretion to allow the expense of bringing a witness to court even if that witness is not called: see *Windham* v. *Bainton*, 21 Q.B.D. 199. Nevertheless, it is unusual to obtain an allowance in respect of expert witnesses who merely give advice and assistance in preparing the evidence, although it is possible to get an allowance even for these witnesses if application is made for a special order: see *Consolidated Pneumatic Tool Co.* v. *Ingersoll Sergent Drill Co.* (1908), 125 L.T.J. 106.

An allowance will be made to a witness to cover his time and expenses occupied in qualifying to give evidence, and the allowance is not limited to those witnesses only who are called: see *A.-G.* v. *Birmingham Drainage Board* (1908), 52 Sol. J. 855. The fee allowed will be limited by the ordinary and normal charges for the time involved, and a fee of five guineas a day was allowed to an accountant and two and a half guineas a day to his clerk for examining accounts: see *In Re Lafite*, 44 L.J. Ch. 633.

A party to an action is usually granted the ordinary allowances where he is called upon to give evidence.

# Company Law and Practice.

## CXXIX.

## THE DECLARATION OF SOLVENCY.

In the old days we had only one kind of voluntary winding up, strictly so called, though there was also the variant—(still with us, but not frequently called upon)—winding up subject to the supervision of the Court; now, however, we have the choice—or shall I say the alternative—of two types: the members' and the creditors' voluntary winding up. Put, quite shortly, the explanation is as follows: Before the recent legislation the creditors had no control over a voluntary winding up, and this was felt, in the case of an insolvent company, to be a hardship, in that the creditors were the persons interested to the exclusion of the members, though the latter retained a general control of the winding up. Two types of winding up are the result of an effort to remedy this hardship; and the remedy has certainly proved an effective one.

Every voluntary liquidation is now a creditors' winding up, and subject to their general control, unless the statutory declaration of solvency to which I will refer in a moment is made, and delivered to the Registrar of Companies for registration, in the manner provided by the Act. The appropriate section is 230, which provides that, where it is proposed to wind up a company voluntarily, the directors (or, if there are more than two, a majority of them) may, at a directors' meeting held before the date on which the notices of the meeting at which the resolution for winding up is to be proposed are sent out, make a statutory declaration to the effect that they have made a full inquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within a period, not exceeding twelve months, from the commencement of the winding up. The Companies (Forms) Order, 1929, provides, in its schedule, a form (No. 39B) of draft statutory declaration under the section; there is no need further to refer to it here, because it follows the wording of the section, and contains nothing surprising or startling. The mere making of the declaration is not of itself sufficient to achieve anything; the declaration when made must be delivered to the Registrar of Companies for registration before the date of the sending out of the notices referred to; if this is done, the contemplated winding up, is, when it materialises, a members' winding up.

Several points emerge from a reading of the section, and first, one may perhaps justifiably comment on the fact that the declaration must, on the wording of the section, be actually made at a directors' meeting; and, if it were not so, it would not be an effective declaration for the purposes of the section. Thus, if the usual meaning is to be given to the words "a meeting of the directors" used in the section, it may not be possible for a majority of the directors to get together at a moment's notice and make the declaration. Except in the case of directors outside the United Kingdom, or directors whose whereabouts are unknown, notice of directors' meetings must be given to all the directors, and if this is not done, the meeting is not an effective one for the purpose of transacting business (see *Re Portuguese Consolidated Copper Mines*, 42 Ch. D. 160). It is unusual for the articles to contain any express provisions as to length or manner of notice; and, if they are silent, it seems to be the case that a verbal notice is sufficient, and that it can be as short as is consistent with giving a reasonable opportunity of attending. I do not wish to dwell unduly on this point, but it is clear that when the question of a statutory declaration is under consideration every effort should be made to see that it is made at a meeting of directors, duly convened and held.

The next comment which may be made is that all the section requires is an expression of opinion, and that there is no categorical statement to be made that the company is, or will be, able to pay its debts; and if an opinion is given in all good faith, and upon due inquiry into the company's affairs as provided by the section, the declarant need have no anxiety if it subsequently turns out to be mistaken. Further, the opinion has only to be that the company will be able to pay its debts in full within twelve months of the winding up, so that in making their estimates, the directors will be able to rely on the fact that it will not be essential that the assets shall be sold at once, with the possibility of only getting a break-up price for them. This brings us to another point, as to whether it is possible for a company to pass a resolution for voluntary winding up under s. 225 (1) (*c*), and for the winding up to be a members' winding up; or perhaps the problem may be better stated the other way round, whether the directors can make and file a statutory declaration of solvency, when the winding up which is contemplated is one to be commenced by a resolution under s. 225 (1) (*c*).

Let us see what s. 225 (1) (*c*) provides. It says that a company may be wound up voluntarily, if it resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up. Is inconsistency necessarily involved, when a statutory declaration of solvency is filed, and a resolution then passed in that form? It is submitted not, and for the following reasons: it does not follow that, because a company is unable by reason of its liabilities to continue its business, it is unable also to pay its debts within a year. A company may be hampered by its liabilities in a variety of ways, as, for instance, it may not be able to purchase further stock with which to trade, but it may yet be solvent on balance. This question arises in connexion with the making of orders for compulsory winding up, for s. 169 instances cases where a company is to be deemed to be unable to pay its debts as they become due, which provide grounds for the making of an order, without reference to any question as to whether or not the proceeds of sale of the assets would cover the liabilities. If a company cannot pay its debts when demanded, is it not fair to say that it cannot by reason of its liabilities carry on business? This would certainly seem to be so, and it therefore follows that a declaration may quite possibly be made where a company is proposing to pass an extraordinary resolution for winding up; and that the two things are not necessarily inconsistent.

But there is another possibility, though admittedly a somewhat far-fetched one. The declaration only refers to payment of the debts within a year, and it may be that, at the time it is made, the assets of the company are worth much less than they will be in another nine months' time, or such may, at any rate, be the opinion of the declarant directors. That such things do occur in real life is illustrated by the case of *Re New Chinese Antimony Co., Ltd.* [1916] 2 Ch. 115; and it is not outside the bounds of possibility that directors might say, "The company is certainly insolvent at the present time, in the sense that the value of the assets is not equal to the total amount of the liabilities, but, in spite of that, our opinion is that, in nine months' time, the assets will have so appreciated in value as to cover the liabilities." In such a case, if the opinion was a *bonâ fide* one based on reasonable grounds, the declaration could certainly be made, though whether the opinion would be justified or not might depend on whether or not the liquidator took as cheerful a view as the directors, and delayed the realisation of the assets.

It is impossible that, in the making of many hundreds of statutory declarations, some mistaken opinions should not be given. So far as the declarants are concerned personally a *bonâ fide* opinion made on reasonable grounds can hardly render them liable; but the effect of such a declaration, if the opinion is mistaken, is to make a members' winding up when it should have been a creditors'. The Act contains no provision for withdrawing or qualifying a declaration once made and filed; and it is difficult to see how it could, for it was only a declaration of opinion at a particular point of time, and though it might be said that, in the events that have happened, the opinion has turned out to be a mistaken one, there seems no room for a withdrawal. What is to be done in such a case? The Registrar has apparently allowed the declarant directors to sign a memorandum, which is also filed, setting out the circumstances; and has thereafter allowed the returns appropriate to a creditors' winding up to be made. This seems to be unjustifiable; in a border-line case the creditors ought to take a chance, and if the making of these statutory declarations is carefully watched, and if proceedings are taken in all proper cases against declarant directors, the Act seems to be satisfactory as it stands, without being tampered with; the legislature being the proper authority to amend it.

(*To be continued.*)

## A Conveyancer's Diary.

**The Law of Property (Entailed Interests) (No. 2) Bill.** —*continued.*

Last week I dealt with s. 1 of this Bill, and I deplored the fact that as the law was to be amended to meet the decision in *Re Price* in one respect, occasion had not been taken to make amendments to rectify the far more important and indeed the fundamental principle laid down in that decision, and followed with such iniquitous consequences in other cases, namely, the ademption of devises of undivided shares in land by the imposition of the statutory trusts.

I quoted from the judgment of Clauson, J., in which he referred to *Attorney-General of Jamaica* v. *Richards* and *Frewen* v. *Frewen*, and said: "The provisions with which I have to deal . . . seem to me to be analogous to the provisions which notionally converted, in the one case cited, slaves and, in the other case cited, an advowson, each real property, into a money claim for compensation."

I ventured to say that the fallacy of that line of reasoning had been pointed out over and over again.

A correspondent now writes to ask me in what respects the reasoning is fallacious. He suggests that "the principle of those authorities applies no less to the conversion effected by the L.P.A. than to that held to have been brought about by the statutes in question in those cases," and he says that he fails to see where the fallacy comes in.

Well, let us see.

In *Attorney-General of Jamaica* v. *Richards* (1848), 6 Moo. 381, the facts were that a testator resident in Jamaica gave "all my right title and claim to compensation such as may be awarded to me as my portion of the compensation fund for the emancipation of such slaves as may belong to me and be living on the 1st August, 1834." By the Slavery Abolition Act, 1833, it had been provided that on the 1st of August, 1833, slavery should cease in British dominions and gave to the owners of the slaves rights to their services as apprentices for a limited period after which they were to be absolutely free. The testator died before that period had expired. According to the law of Jamaica slaves could only be devised as real estate, and it was admitted that the will was not properly executed so as to pass real estate.

It was contended (and in fact held in the Court of Chancery in Jamaica) that the time of manumission not having arrived the compensation money must be regarded as realty and did not pass under the will. That decision was reversed in the Privy Council on the ground that the slaves had been converted into compensation money by the statute.

*Frewen* v. *Frewen* (1875), 10 Ch. 610, was a case where a testator made a devise of advowsons in Ireland. The Irish Church Act, 1869, was then passed abolishing advowsons and giving their owners a right to compensation. The testator, after the passing of the Act, made a codicil which did not refer to the devise of advowsons, but it does not appear whether it confirmed the will. The testator having died, a claim for compensation was made by the devisee. On a special case stated for the opinion of the court it was held that the money was payable to the executors. The point chiefly relied upon by the devisee appears to have been that there was a period after the passing of the Act (which had not expired at the death of the testator) during which the former owner could present to the benefice if any vacancy occurred during that time, so that there had been no complete destruction of the advowson when the testator died.

Now it seems clear that both these cases were dealing with statutes, the object and purpose of which was to take away from an owner all property and interest in the one case in slaves and in the other in advowsons, but to compensate the owner for the loss sustained.

It cannot, I think, be said that the object and purpose of the L.P.A. was to deprive the owner of an undivided share in land of his rights therein, except in any but a purely artificial and technical sense, and then only as incidental to simplifying conveyancing. Until actual conversion the owner remains entitled to his share of the rents and profits, and even with regard to a sale he is entitled to be consulted by those in whom for the convenience of conveyancing the entirety has become vested. His actual rights are not intended to be interfered with. That was what was evidently meant to be expressed in Pt. I of the 1st Sched. to the L.P.A.:—

> "All estates, interests and charges in or over land, including fees determinable, whether by limitation or condition, which immediately before the commencement of this Act were estates, interests or charges, subsisting at law, or capable of taking effect as such, but which by virtue of Part I of this Act are not capable of taking effect as legal estates, shall as from the commencement of this Act be converted into equitable interests and shall not fail by reason of being so converted into equitable interests either in the land or in the proceeds of sale thereof, nor shall the priority of any such estate, charge or interest over other equitable interests be effected."

I repeat that there is no analogy in purpose or intention between the Slavery Abolition Act, 1833, regarding property in slaves, or the Irish Church Act, 1869, regarding

property in advowsons in Ireland, and the L.P.A., 1925, regarding undivided shares in land.

Last week I mentioned some cases which had worked injustice by applying *Re Price*, and said that perhaps *Re Newman* was the worst of all.

I may here remind the reader of one or two others.

In *Re Flint; Flint* v. *Flint* [1927] 1 Ch. 570, a testator, who died in 1920, devised lands to trustees in trust to pay certain annuities, and subject thereto to divide the income between his children in equal shares. He gave his trustees a power of sale at any time, and there was a trust for sale after the death of the last surviving child. The testator directed that before selling certain property it should be offered to one of his sons at a price to be fixed by valuation. The property not having been sold before 1926, the statutory trusts were imposed by the L.P.A. It was held that the statutory trusts displaced the trusts of the will and that the son's right of pre-emption was gone.

Another unfortunate case is *Re Thomas's Will Trusts: Powell* v. *Thomas* [1930] 2 Ch. 67, where a testator gave his residuary personal estate in trust to pay the costs of his brother in establishing the claim which the testator thought he had to certain settled estates, and if his brother were successful in trust for him absolutely. In fact, those estates (although still unsold) had become subject to the statutory trusts by virtue of the transitional provisions of the L.P.A. Therefore, said Bennett, J., there were no estates to which a claim could be made, so the condition attached to the bequest of the residuary personalty was impossible of fulfilment at the date of the will. Consequently the condition failed, and the brother took the residue free from it.

I must now turn to s. (2) of the Bill, which reads:—

> "For removing all doubts it is hereby declared that the expression 'rent-charge in possession' in paragraph (*b*) of sub-section (2) of section one of the Law of Property Act, 1925, means a rent-charge not limited to take effect in remainder after or expectant on the failure or determination of some other interest and whether or not the payments in respect thereof are limited to commence or accrue from the time of its creation."

I should not have thought that there were many doubts to be removed. If there are, this will set them at rest.

The section is, of course, directed to cases where land is sold subject to a rent-charge which is not to commence until some date (generally a year) after the date of the conveyance.

In some parts of the country conveyances subject to a rent-charge are preferred to long leases. In the latter, which are practically always building leases, it is usual to reserve a peppercorn rent during the first year, and it is consequently customary when granting a conveyance subject to a rent-charge instead of a building lease, to make the rent-charge payable as from a year after the date of the conveyance. It has occurred to some legal luminaries that such a rent-charge would not be "in possession," and therefore would be an equitable interest only, with the result, amongst other things, that it would require to be registered under the L.C.A., 1925.

Such is the Bill.

## THE AUCTIONEERS' AND ESTATE AGENTS' INSTITUTE.

### PROFESSIONAL EXAMINATIONS, 1932.

**Seven hundred and twenty-one candidates sat for the Professional Examinations, of whom 407 were successful, Mr. Trevor H. Hall, of Wakefield, being first in the Final Examination, gaining the Institute Prize of fifteen guineas, and Mr. Howard H. Wagstaff, Croydon, winning the silver medal and prize of ten guineas in the Intermediate Examination.**

**The Daniel Watney Gold Medal and prize of ten pounds in text-books, for the highest aggregate of marks in the Intermediate and Final Examination, is awarded to Mr. J. E. King, of London.**

# Landlord and Tenant Notebook.

**Insurance and Subrogation.**

An insurance effected by a landlord or tenant is governed by the general principles of insurance law like any other insurance policy; the liability of the insurer is limited to indemnifying the insured, and he is entitled to "stand in the shoes of the insured" as regards any benefits to be derived from other contracts. A good illustration of the application of these principles was afforded by *Darrell* v. *Tibbitts* (1880), 5 Q.B.D. 560, C.A. The premises, which were held on a repairing lease, were badly damaged by an explosion of gas. The cause of the explosion was the use of a steam-roller on the adjoining roadway, the gas mains not lying deep enough to withstand the strain. The corporation compensated the tenant, who repaired the damage. Meanwhile the landlord, the defendant in the action, recovered insurance money on a policy taken out with the plaintiffs. They now wanted the money back. Their chief concern seems to have been to find a cause of action, but the Court of Appeal found them at least two. A contract of insurance was a contract of indemnity; the insurer was a surety entitled to any benefit received by the insured; if the tenant had been sued on his repairing covenant it would have been no answer for him to say that the landlord was entitled to compensation from someone else, etc., etc.; but apart from these generalities, the court held that there was an implied promise by the defendant to repay the money received if the damage were made good by other parties, though he was clearly entitled to receive in the first instance. The general principles were enlarged upon soon afterwards by the same court in *Castellain* v. *Preston* (1883), 11 Q.B.D. 380, notably in the judgment of Bowen, L.J., at p. 398.

Likewise, if a tenant derives benefit from rights against others, he may be in the same position as the landlord-defendant in *Darrell* v. *Tibbitts*. The facts of the interesting case of *West of England Fire Insurance Co.* v. *Isaacs* [1897] 1 Q.B. 226, C.A., were as follows: The defendant was a sub-tenant of part, under a covenant to repair, who had insured with the plaintiffs in his own name, and been paid £100 by them in respect of a fire which had damaged both parts of the premises. They then learned that the mesne tenant was under a covenant with the superior landlord to insure in their joint names, and to lay out insurance moneys received in reinstating the premises and to make good any deficiency. Also that the mesne tenant had covenanted with the defendant to insure and lay out moneys received in reinstatement, the defendant to make good any deficiency under his covenant. Also that when the fire had taken place the superior landlord had called upon the mesne tenant to effect repairs, and the mesne tenant upon the defendant. The question between the superior landlord and the mesne tenant had been settled by a payment of £250; the mesne tenant had sued the defendant and accepted £140 *in final settlement*. And the mesne tenant was then paid £100 by his insurance company. The plaintiffs accordingly maintained that the defendant had renounced rights to which they would otherwise have been subrogated, and recovered their £100.

The effect of insurance on the exercise of an option to purchase has been considered in two landlord-and-tenant cases. In *Reynard* v. *Arnold* (1875), L.R. 10 Ch. App. 386, the plaintiff held a mill of the defendant, the term being seven years. The plaintiff was under a covenant to insure for £800 and to expend any insurance money on reinstatement, and he had an option to purchase the freehold for the same sum. If the option were exercised, rent was to be payable until completion. The plaintiff actually insured for £1,080; and when a fire occurred, doing damage to the extent of £600, he learned to his surprise that the landlord had effected another insurance, in the sum of £515; consequently, the insurance companies were entitled to contribution *inter se*,

and the plaintiff recovered only £379 4s. Thereupon the plaintiff sought to exercise his option to purchase, and the defendant sought to exercise his right to reinstatement, and threatened moreover to call upon the insurance company to expend the money in repairs in accordance with the Building Act. The plaintiff then obtained an injunction restraining him from so doing, and this was upheld on appeal, the ground being that the defendant had by his own act diminished the benefit due to the plaintiff, and the tenant not having had any notice of the other policy the landlord must account for the proceeds.

This case was distinguished in *Edwards* v. *West* (1878), 7 Ch. D. 858. In this case it was the landlord who had covenanted to insure. The sum to be assured was £14,000; if fire did damage not exceeding £4,000, the money was to be laid out in reinstatement; if more, the lease was to determine. The tenant had an option to purchase for £12,000. A fire occurred, and the landlord received £12,000. The tenant then purported to exercise the option, insisted that the landlord was a trustee for the insurance money, and claimed a declaration to that effect. Fry, J., pointed out that there were four dates to be considered: that of the contract creating the option; that of the fire; that of the exercise of the option; and that of intended completion. And while in *Reynard* v. *Arnold* both parties could be said to be interested in reinstatement, and the landlord had cut down the tenant's insurance money owing to the operation of the doctrine of contribution, in this case there was no stipulation as to reinstatement, and the fire in fact absolved the tenant from further obligation.

I should add a reference to the L.P.A., s. 47, which has since enacted that insurance money payable after a contract for sale is to be held on completion on the purchaser's behalf and paid to the purchaser on completion; but subject to any stipulation and to "consents by insurers"—what consents are indicated is somewhat uncertain. The T.A., s. 20, provides for the application of insurance moneys by trustees, sub-s. (4) dealing with reinstatement. But it should be noted that the granting of an option is not a contract for sale; this suggestion was definitely rejected by Fry, J., in the last-mentioned case.

## Our County Court Letter.

### COSTS UNDER THE LANDLORD AND TENANT ACT, 1927.

In *World's Stores Limited* v. *Capell and Others*, recently heard at Axminster County Court, the applicants had applied for a new lease of their premises, which occupied one building and also the ground floor (only) of the adjoining premises. The respondents had offered to sell the whole of the adjoining premises for £6,000, but the referee had fixed £2,800 for the stores and £1,650 for the adjoining premises. An offer of £4,000 for the stores was accepted on the 23rd July, 1931, but the applicants contended that they should still recover their costs up to that date, as they had succeeded in the proceedings by reason of the fact that the value had been fixed within £150 of their previous offer, viz., £2,650. The respondents' case was that one joint owner was aged eighty, and the others were trustees, so that there was no alternative but to sell, even at a reduced figure. His Honour Judge The Hon. W. B. Lindley awarded costs to the applicants up to the 23rd July, 1931, thereafter each party to pay their own. A stay of execution was granted pending an appeal.

### THE RIGHTS AND LIABILITIES OF DANCE BANDSMEN.

The above subject has been considered in two recent cases. In *Black* v. *Frankenburg*, at Manchester County Court, the claim was for £30, being five weeks' salary at £6 a week as conductor of a dance band. The plaintiff's case was that (1) having given a satisfactory audition to the defendant and his manager, the band was engaged for six weeks; (2) at the end of the first week, the plaintiff was given notice by the manager, as agent for the defendant. The agency was denied by the defendant, whose case was that (*a*) the manager was paid £48 a week, out of which he had to provide a band; (*b*) the plaintiff's contract was not with the defendant. His Honour Judge Leigh observed that, if the manager had been sued, he would have had no defence, but the defendant was not liable as proprietor, and judgment was therefore given in his favour, with costs.

In *Dale* v. *Roach*, at Birmingham County Court, the claim was for £54, being nine weeks' salary at £6 a week as a saxophonist—the defendant being the musical director at a ball room. The dismissal was alleged to be justified by a clause in the defendant's agreement with the proprietor, viz., that any member of the band should be changed in the event of his not giving satisfaction to the management. There was no complaint against the plaintiff, however, who had merely been dismissed on account of the need for reducing the band by two, to prevent the whole band becoming unemployed. His Honour Judge Dyer, K.C., gave judgment for the plaintiff, with costs.

### THE REMUNERATION OF DOCTORS.

In *Blain* v. *Linnell and wife*, recently heard at Manchester County Court, the claim was for £10 10s., being £5 5s. for a consultation at the defendants' house and £5 5s. for five visits in May to a nursing home. The plaintiff sent a note of his fees on four occasions, without result, and he therefore wrote in November to the first defendant, who (for the first time) expressed dissatisfaction with his wife's condition, on discharge from the nursing home. The defendants had paid £2 2s. into court, their case being that (*a*) they had only agreed to their own doctor consulting a colleague, and not a specialist; (*b*) it was unreasonable that a half-hour's consultation should cost as much as a week's stay in the nursing home; (*c*) the plaintiff had only been engaged for a consultation, and his subsequent attendances were unauthorised. His Honour Judge Leigh remarked that no dispute had arisen as to the success of the treatment, the progress of which obviously had to be observed by the plaintiff at the nursing home. The reasonableness of the charges depended upon the eminence of the consultant, the success of the treatment and partly upon the patient's means. Judgment was accordingly given for the plaintiff, with costs. For a prior reference, see the County Court Letter in our issue of the 26th December, 1931 (75 Sol. J. 880).

### THE LIFE ASSURANCE OF DOCTORS.

In *O'Shea* v. *Gregg and Others*, recently heard at Bloomsbury County Court, the claim was for £52 10s., due to the plaintiff as assignee or alternatively executrix of her late husband. The latter had died on the 11th January, 1932, and, in consideration of his membership of the Medical Practitioners' Union, the defendants (as president, secretary and trustees on behalf of all the members) became liable to pay fifty guineas under a scheme outlined in a circular. The plaintiff's case was that the deceased had ordered the amount to be paid to his widow on his death, but the defence was a denial of any binding contract, and it was further contended that (*a*) the scheme had been discontinued on the 1st December, 1931; (*b*) the action was not maintainable by virtue of the Trade Union Act, 1871. The plaintiff's contention was, however, that the benefit could not be discontinued without an alteration of the rules, and the amount was, therefore, still payable. His Honour Judge Hill Kelly held that there was a contract to pay fifty guineas to the personal representatives of the deceased, but judgment was deferred until the grant of probate to the plaintiff. Compare the "County Court Letter," entitled "The Remuneration of Doctors," in our issue of the 26th December, 1931 (75 Sol. J. 880).

# POINTS IN PRACTICE

**Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.**

**Income Tax**—Increase of, by Finance (No. 2) Act, 1931—Effect on Purchasers of Shares.

*Q.* 2466. Shares were purchased in July ex-dividend (this being interim dividend payable in August), which, of course, went to the seller, but subject to deduction of tax by the company at 4s. 6d. In February, the purchaser received the final dividend, the company having deducted tax at 5s. thereon, plus a further 6d. in respect of the August interim dividend, in view of the increase of tax in September. Who should bear the additional 6d. tax ?

*A.* Undoubtedly the seller should bear the extra 6d., but we do not know of any right of action by the purchaser against the seller to recover the amount. Section 211 of the Income Tax Act, 1918, as applied by the provisions of the Third Schedule of the Finance (No. 2) Act, 1931, seems clearly to make it a matter for the revenue authorities to adjust by further assessment on one party and consequential relief to the other. See also Finance Act, 1930, s. 12 (2) and (3).

**Restrictive Covenant against Erecting Building**—Addition to New Building.

*Q.* 2467. A long lease of a piece of land, granted some fifty years ago, at a ground rent, contained, *inter alia*, a covenant against the erection of any building on the land without the consent of the lessor. The lease contains no covenants in regard to repairs or alterations to any building that might be erected on the land. A building has been standing on the land for many years, and must be presumed to have been erected with the required consent, but the present owner of the freehold reversion has no information on the point. Structural alterations are being made to the building. Has the reversioner any right to object, or any and what rights as regards the building ?

*A.* Providing the structural alterations are additions from the ground upward to the exterior of the building, it is considered they come within the covenant that consent is required. The reported cases are mostly in connexion with London Building Acts or Public Health Acts, e.g., *Coburg Hotel Co.* v. *L.C.C.* 81 L.T. 450. For a case of breach of covenant, which appears to be directly in point, see *Western* v. *McDermot*, 2 Ch. 72. On principle, it is considered that a super-structure added to the existing house would also be a breach, but not an alteration, such as of windows or doors, which did not increase the building.

**Income Tax Adjustment between Buyer and Seller.**

*Q.* 2468. In October, 1931, trustees purchased 4 per cent. consols, and on 1st February, 1932, they received a dividend, less 5s. 6d. tax in the £. The seller of this stock when he received his dividend on 1st August, 1931, only suffered tax at 4s. 6d. In the result, the trustees are bearing 6d. in the £ tax for which the seller was liable under the Finance (No. 2) Act, 1931. Accordingly a request was addressed to the brokers, through whom the purchase was made, to obtain a refund from the seller. They have refused on the grounds, apparently, that the members of their local Stock Exchange have deliberately decided not to involve themselves in any such claims or adjustment of tax between buyers and sellers. This is a point which must affect all dividends payable after the passing of the Act, involving a very large sum of money, and your advice is sought upon the means by which the tax for which he is liable can be recovered from the seller.

*A.* It is quite true that the difficulty pointed out must have arisen in numerous cases, but we fail to see how the buyer can get relief except through the Inspector of Taxes. If the brokers decline to adjust the matter (and they do not appear to be under any liability to do so), the buyer will not know for whose benefit he actually suffered deduction of the extra 6d. in the £ and if he did discover the identity of the person, it does not appear that the deduction comes within the description of money paid to the use of such person. By the Third Schedule to the Finance (No. 2) Act, 1931, s. 211, of the Income Tax Act, 1918, is made applicable, sub-s. (1) of the latter section seems to make it a matter for the Inland Revenue to collect the amount underpaid by assessment on the seller, and consequently to allow the buyer to claim repayment from the Revenue.

**Validity of Banking Partnership.**

*Q.* 2469. A limited liability company, hitherto conducting a hire-purchase business on the usual lines of the purchase of the chattel and the hiring of the same, now finds its business advancing along other lines, namely, the granting of advances and loans against security in the form of mortgages of property, life insurances, etc., and mortgages and debentures covering parcels of hire-purchase agreements deposited by traders. This latter development is now rapidly becoming the major portion of the business and has brought under consideration the advisability of obtaining a money-lender's licence. For several reasons this is undesirable, and it is suggested as an alternative to this course that a subsidiary concern, operating as a banking company, should be formed. The registration of such a company as a limited liability company would entail the publication of half-yearly balance sheets, and as the parent company is a private one, this again is undesirable. To overcome these difficulties, it is proposed that a private banking partnership should be registered under the Business Names Act, constituted in one of the following ways :—

(*a*) The parent company as proprietor.

(*b*) The partners, consisting of the parent company and another individual, registered as a limited company.

Do you consider either of these suggestions as practicable ? If so, which do you prefer ? Do they comply with the law relating to banking partnerships ? Are there any difficulties likely to be encountered, either in the formation, management or winding up of such a concern ? Does the question of personal liability arise ?

*A.* The proposed partnership will not infringe the Companies Act, 1929, s. 358, provided the membership does not exceed ten, but it is not clear how the business to be carried on can be described as banking, and the subsidiary concern will be required to obtain a money-lender's licence. Proposal (*a*) is not regarded as practicable, as, if the parent company is the proprietor (in the sense of providing all the capital), the fact that that part of its business is conducted under a different name will be no protection to the parent company. Proposal (*b*) is preferable, but, as the parent company will be a general partner, it will be liable to the full extent of its assets, under the Limited Partnerships Act, 1907. The question of personal liability does not arise, but difficulties are likely to be encountered under the Moneylenders Act, 1927, s. 2 (3), if there is to be any implication that a banking business is carried on.

# In Lighter Vein.

THE WEEK'S ANNIVERSARY.

Sir Archibald Macdonald died at his house in Duke Street, Westminster, on the 18th May, 1826, thirteen years after his retirement from the office of Chief Baron of the Exchequer. His care and impartiality made him a reasonably good judge, though, as a contemporary writer put it, his success had been owing "more to the Petticoat than to the Gown." Certainly he owed a great deal to his marriage with Lady Leveson Gower, the eldest daughter of the Marquis of Stafford. In Parliament he made scarcely any mark, and at the bar his practice hardly extended beyond a few Scottish appeals, which he owed in some degree to the glamour of his ancient lineage, for he was a direct descendant of the Lords of the Isles. His first promotion was to a Welsh judgeship. Eight years later he became Attorney-General, and finally, in 1793, Lord Chief Baron, an office which he enjoyed for twenty years. Thus England, Scotland and Wales all contributed to his success. His conversational talents and agreeable manners made him very popular in society, for in character he was the most estimable and amiable of men.

TIME AND JUSTICE.

While the lay world is rejoicing at all the fuss lately made over the proposed speeding-up of litigation, it is well to draw attention to Mr. Justice Swift's recent remark to a counsel who intimated that in the interests of time he did not intend to cross-examine a witness. He said, "It is not the interests of time we are concerned with in these courts. Our concern is to see that justice is done." It must be admitted that these exemplary sentiments have not always been current on the Bench. Once Mr. Justice Ridley went so far as to threaten to leave the court if a member of the Bar, who had occupied half an hour in opening the defendant's case, did not instantly call his witnesses. Now and then most advocates must have been tempted to emulate a notable piece of forensic rudeness of which "Counsellor" Carter, an old-time intransigent of the Western Circuit, was once guilty. "Mr. Carter, you are wasting the time of the court," said Blackburn, J. "Time of the court!" exclaimed Carter, glowering at the judge. "Your lordship means your lordship's dinner."

SCRIPTURAL CITATIONS.

The hearing of *Place* v. *Searle* in the Court of Appeal has atoned for the misplaced classical allusion in the court below by more apposite scriptural quotations. Counsel for the respondent in elucidating the meaning of the word "enticement," referred to Delilah's conduct towards Samson as narrated in the Book of Judges, where it is said that "she pressed him daily with her words and urged him." Lord Justice Slesser thereupon referred to Adam's plea that the woman tempted him and remarked that there was no evidence that Adam was unwilling to eat the forbidden fruit. Scripture turns up quite frequently in legal discussion, and only last year Roche, J., in interpreting the meaning of the word "lost," appealed to the parable of the woman who lost a silver piece and searched diligently till she found it. The old case of *R.* v. *Jones* at the Derby Assizes, when the summing-up of Maule, J., turned on a text from Deuteronomy was related not long ago in this column. In *Abley* v. *Dale* the same judge, in laying down a principle of natural justice, referred to God's citation of Adam to make defence for his sin. In this he followed an earlier judgment of Mr. Justice Aland Fortescue.

HIDING IDENTITY.

There was a good deal of justification for Lord Justice Scrutton's recent remark that "there has been too much keeping names out of court for inadequate reasons." The normal price of justice is revelation, public redress overriding private convenience. Still, hard cases and uncomfortable situations never fail. Once, by a curious coincidence, the famous Ballantine on the one side of a fire insurance dispute and Lush (afterwards Lord Justice) on the other, each had a witness who had seen the midnight conflagration in question in circumstances which would have given rise to most embarrassing explanations in the domestic circle. At their instance, the learned leaders reached an agreement whereby these two witnesses cancelled out and were dispensed with.

# Obituary.

JUDGE SHORTT.

His Honour John Shortt, the *doyen* of County Court Judges, died on Sunday, the 8th May, at his home at Buckingham Gate, S.W., at the age of ninety-three. He was called to the Bar by the Middle Temple in 1866, and was on the Cambridgeshire Circuit from 1901 to 1905 and on the East Kent Circuit from 1905 to 1922. He took a keen interest in cricket, golf, mountaineering and angling.

MR. W. MAY.

Mr. William May, solicitor, senior partner and one of the founders of the firm of Messrs. Slaughter & May, solicitors, of Austin Friars, E.C., died on Friday, the 6th May, at Pitt Hall, near Basingstoke, at the age of sixty-nine. Mr. May, who was admitted a solicitor in 1888, was Chairman of the Home and Colonial Stores Ltd., and of the Reading Electric Supply Co. Ltd., and director of several other companies. His hobbies were yachting, shooting and music.

MR. W. B. ESAM.

Mr. William Burnett Esam, solicitor, senior partner in the firm of Messrs. Watson, Esam & Barber, solicitors, of Sheffield, died on Thursday, the 5th May, at his home at Broom Hall, Sheffield, in his eighty-fifth year. Mr. Esam, who was born in Sheffield, served his articles with the late Sir Henry Watson, and was admitted a solicitor in 1871. He was elected President of the Sheffield Incorporated Law Society in 1896, and at the time of his death was the senior practising solicitor in Sheffield. He held many important posts, including that of Clerk to the Sheffield Assay Guardians, and he was senior member of the local Boards of Directors of the National Provincial Bank Ltd. and of the Alliance Insurance Company.

MR. J. MOORE.

Mr. John Moore, solicitor, of Hereford, died there recently at the age of fifty-four. Mr. Moore, who was admitted a solicitor in 1899, succeeded his father in 1918 as Clerk to the Hereford Board of Guardians and Rural District Council. He was a member of the Hereford Charity Trustees, a Manager of St. John's Schools, Hereford, and Deputy City Coroner, having previously been Deputy County Coroner. He was a member of Hereford City Council from 1910 until 1926, and in 1931 was elected a member of Herefordshire County Council. He was this year's President of the Herefordshire Law Society.

MR. R. A. KENDRICK.

Mr. Robert Arthur Kendrick, solicitor, of Finchley, Camden Town and New Broad-street, E.C., died at his home at Finchley on Sunday, the 1st May, at the age of fifty-nine. Mr. Kendrick, who was admitted a solicitor in 1912, was Hon. Solicitor to the St. Pancras Chamber of Commerce, and was one of the founder-members of the St. Pancras Rotary Club.

MR. W. R. W. MURRAY.

Mr. William Robert Walker Murray, solicitor, of Manchester and Bowdon, died at his home at Bowdon on Monday, the 2nd May, at the age of sixty-two. He was admitted a solicitor in 1891. Mr. Murray was an enthusiastic sportsman, and in his younger days played rugby football, hockey and water polo, and for many years had been a member of Timperley Golf Club.

# Correspondence.

## "Voluntary Liquidation under the Companies Act, 1929."

Sir,—In your reviewer's notice of "Voluntary Liquidation under the Companies Act, 1929," which appeared in your issue of the 30th ult., the practice of the Registrar of Companies, stated in the book in relation to a declaration of solvency made under s. 230, which subsequently proves unjustified, is commented on. The practice which is questioned is that of the Registrar in a members' voluntary winding up, in which the debts cannot be paid within twelve months, accepting for filing a letter signed by the directors explaining the position, after which the conduct of the liquidation follows the procedure prescribed in a creditors' voluntary winding up.

The writer of the review asks whether that to which he refers as a "tampering with the Act" is justified. In the interests of the creditors, the practice is, in the opinion of my co-author and myself, thoroughly justified; but it would, of course, be better if the Act made provision for dealing with such a situation as, for example, by requiring a meeting of the creditors to be forthwith convened in such a case, and by empowering such meeting to appoint a liquidator to act jointly with the existing liquidator.

Whilst not quarrelling with your reviewer's observation that only an honest statement of opinion is required, there has to be contemplated the honest opinion of the optimist, who may be over sanguine. The Act does not contain any provision designed to restrain the over optimistic or to cause the irresponsible to hesitate. It may be that a provision that directors who had made a declaration which proved to be unjustified be required within a prescribed period to submit to (say) the Board of Trade or the Registrar in Bankruptcy an explanation of the circumstances in which they decided to make the declaration, and the further provision that in the event of the explanation proving unsatisfactory, prosecution would follow, might operate as an effective check.

London, W.C.2. HERBERT W. JORDAN.
6th May.

## A Jury Mystery.

Sir,—Referring to the letter appearing under the above heading in the correspondence column of your journal of the 30th ult., the following is a quotation from "Blackstone," Vol. IV., Ch. 27, at p. 345, dealing with "Wrongs":—

> "But it is not customary, nor agreeable to the general course of proceedings, unless by consent of parties, to try persons indicted of smaller misdemesnors at the same court in which they have pleaded not guilty, or traversed the indictment. But they" (apparently the jurors) "usually give security to the court, to appear at the next assizes or session, and then and there to try the traverse, giving notice to the prosecutor of the same."

Birmingham. H. W. C.
10th May.

# Reviews.

*Stone's Justices' Manual*, 1932. Sixty-fourth edition. Edited by F. B. DINGLE, Solicitor, Clerk to the Justices, Licensing Justices, etc., for the City of Sheffield. Demy 8vo. pp. cclxxix and (with Index) 2,234. London: Butterworth and Co. (Publishers), Ltd.; Shaw & Sons, Ltd. 37s. 6d. net. Thin edition, 5s. net extra.

It is a commonplace that good wine needs no bush. So it would be idle, if not impertinent, to commend a book which has for many years proved indispensable in our "Police Courts"—to use a popular, if inaccurate, term. Suffice it to say that this is the sixty-fourth edition.

It is, perhaps, natural to under-estimate the worth of courts of inferior jurisdiction. But latterly the "Police Courts" have gained in importance, not merely by reason of the tendency to extend their jurisdiction (the reader will, no doubt, recall the effect of certain provisions of the Criminal Justice Act, 1925), but because of the amount and variety of the business transacted. It has been said that justices of the peace have to deal with a wider range of subjects and a greater variety of cases than even a judge of the High Court. When it is remembered that, in the majority of courts, the Bench lacks legal training, and must rely for guidance upon the clerk, it will be realised that "Stone" is a present help.

This book is divided into five parts: (1) The Court and Clerk; (2) Indictable Offences; (3) Summary Jurisdiction Acts, etc.; (4) Practice and Evidence. The fifth contains substantive law and is arranged in alphabetical order. There are, in addition, appendices of common forms, punishments, etc.

The main amendments and additions are indicated in the preface. The portion devoted to "evidence" has been re-written, and new cases and recent statutory enactments have, of course, been incorporated. For example, the Road Traffic Act, 1930, is considered in detail, and the Highway Code is reproduced *in extenso*. One observes, however, that the Import Duties Act, 1932, which creates certain offences punishable summarily, has escaped attention—presumably because it was passed too late for inclusion.

The text is abundantly noted; the cases and statutes are tabulated; and the general index appears to be adequate. The price of the book is by no means unreasonable, and there is no doubt that, as in past years, it will be in great demand.

"Stone" will assuredly preserve its place in the forefront of practical legal works if the standard of this edition is consistently maintained.

*Some Experiences of a Court-Martial Officer*. By T. HANNAM-CLARK. 1932. London: Besant & Co., Ltd. 1s. net.

This booklet will revive many memories in those who were "set under authority" during the war years. Dealing, as it must, with the seamy side of army life, its treatment of it is yet agreeably practical.

## Books Received.

*Perplexing Points in Company Law and Partnership Law.* By EDWARD WESTBY-NUNN, B.A., LL.B., of Lincoln's Inn, Barrister-at-Law. 1932. Post 8vo. pp. viii and (with Index) 69. London: Macdonald & Evans. 2s. 6d. net.

*Fraud in Medico-Legal Practice.* By Sir JOHN COLLIE, C.M.G., M.D., J.P., Lt.-Col. R.A.M.C. 1932. Demy 8vo. pp. xi and (with Index) 276. London: Edward Arnold and Co. 10s. 6d. net.

*The Articled Clerk's Cram Book.* By W. S. CHANEY, Solicitor (John Mackrell Prizeman). Demy 8vo. pp. (with Index) 794. 1932. London: Sweet & Maxwell, Ltd. 17s. 6d. net.

*My Affairs.* A compact and easily kept record for the guidance of one's Executors. 1932. London, Liverpool and Glasgow: The Solicitors' Law Stationery Society, Limited. 2s. 6d. net.

*Reports of Cases Decided by Francis Bacon, in the High Court of Chancery*, 1617–1621. Prepared by JOHN RITCHIE, M.A., of the Inner Temple, Barrister-at-Law. 1932. Royal 8vo. pp. xxxii and (with Index) 302. London: Sweet & Maxwell, Ltd. 42s. net.

[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited, London and Liverpool.]

# Notes of Cases.

## High Court—Chancery Division

*In re* **Salting: Baillie-Hamilton** *v.* **Morgan.**

Eve, J. 15th April.

WILL—SETTLED LEGACY—PROTECTED LIFE INTEREST—FORFEITURE OF LIFE INTEREST ON ALIENATION—SUMMONS TO RAISE CAPITAL MONEYS FOR BENEFIT OF TENANT FOR LIFE—INSURANCE OF LIFE ESTATE—PREMIUMS OUT OF INCOME—TRUSTEE ACT, 1925, s. 57.

The question raised by this summons was whether a protected life interest had been determined or forfeited by an order of the court. By her will dated 25th July, 1917, M.E.S. bequeathed £15,000 upon trust to pay the income to the plaintiff until he should assign or do or suffer something whereby the income or part thereof would become payable to some other person, and upon failure of such trust in his lifetime, then upon discretionary trusts for the benefit of the plaintiff or his wife or children, or if none, other persons. The plaintiff, who was married but had no children, applied to the court for authority to the trustees to raise £15,000 out of the trust legacy and to apply the same in discharge of debts and otherwise for his benefit upon his effecting a policy of assurance on his own life to secure repayment. The application was made under the Trustee Act, 1925, s. 57. Accordingly an order was made on 7th March, 1931, that the trustees should raise £15,000 out of the capital of the legacy and apply the same as therein mentioned, and that the plaintiff should forthwith effect a policy of assurance on his life for £15,000 and assign the same to the trustees upon the trusts affecting the legacy, and that the trustees should pay the premiums, other than the first premium, out of the income of the legacy unless the plaintiff should produce a receipt for the premium. The question was whether the order in this form determined the life interest.

EVE, J., in giving judgment, said no forfeiture would be caused by the order so far as it authorised the payment of capital for the benefit of the plaintiff, but it was contended that forfeiture was brought about by the authority to pay premiums out of the income. The effect of the order was not to forfeit the plaintiff's life interest, even though he might be temporarily deprived of part of his income, so long as he paid the premiums and produced the receipts and so long as the trustees were not called upon to apply any of the income in so doing.

COUNSEL: *Fergus Morton*, K.C., and *C. E. Harman; H. Parshall; C. V. Rawlence; J. Neville Gray.*

SOLICITORS: *Withers & Co.; Flower & Nussey.*

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

## High Court—King's Bench Division.

**Bright** *v.* **Ashfold.**

Lord Hewart, C.J., Avory and Hawke, JJ. 8th April.

INSURANCE—MOTOR-CYCLE—THIRD PARTY RISK—PILLION PASSENGER—VEHICLE NOT COVERED BY POLICY—NO INSURANCE—ROAD TRAFFIC ACT, 1930 (20 & 21 GEO. 5, c. 43), s. 35 (1).

This was an appeal by case stated from a decision of the Epsom justices.

An information under s. 35 (1) of the Road Traffic Act, 1930, was preferred by the appellant, William Ernest Bright, against the respondent, Harold Leslie Golds Ashfold, charging him with, on the 4th April, 1931, using a motor-vehicle on a road without there being in force in relation to the use of the vehicle such a policy of insurance or such a security in respect of third-party risks as complied with the requirements of the Act. The following facts were proved or admitted. On the 4th April, 1931, at Cheam Road, Cuddington, Surrey, the respondent was driving a "Triumph" two-wheeled motor-cycle with another person riding on the pillion. No side-car was attached to the motor-cycle. The motor-cycle was, on the date in question, the property of the City Engineering Motor Company, and was being driven by the respondent with the consent of the owners. There was in force a policy of insurance which indemnified the respondent against third-party risks while using another motor-cycle, and also indemnified the respondent against third-party risks while driving a motor-cycle not belonging to him. One of the terms of the policy was as follows: "Provided always and it is hereby expressly agreed that the Corporation shall not be liable for any accident, loss or damage caused or sustained while any motor-cycle in respect of which indemnity is granted under this policy is (*a*) carrying a passenger, unless a sidecar is attached . . ." The authorised insurer issuing the policy had issued to the respondent a certificate of insurance which contained a certificate that the policy to which it related was issued in accordance with the provisions of Pt. II of the Road Traffic Act, 1930. The certificate also provided that: "This policy does not cover . . . (2) use whilst carrying a passenger unless a sidecar is attached to the motor-cycle." The justices dismissed the information.

Lord HEWART, C.J., giving the judgment of the court, said that he thought that the case was really too clear for argument. The policy did not cover the use of the motor-cycle with a passenger unless a side-car was attached. In those circumstances, which were the circumstances of the present case, there was no policy in force and therefore, no insurance within the meaning of the Act. The appeal would be allowed.

COUNSEL: *G. D. Roberts*, for the appellant; *E. Garth Moore* (*Gerald Dodson* with him) for the respondent.

SOLICITORS: *Wontner and Sons; Wilkinson, Howlett and Moorhouse.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

## Probate, Divorce and Admiralty Division.

**In the Estate of Bowker, deceased.**

Lord Merrivale, P. 14th March.

PROBATE—MOTION TO OMIT WORDS FROM PROBATE COPY OF WILL—TESTATOR'S DIRECTIONS AS TO DISPOSAL OF BODY—WORDS USED TENDING TO SCANDALISE AND OFFEND.

The testator, who died in 1931, left a will made in 1928, containing certain directions for the disposal of his body. The words employed, although not defamatory of any person or persons, might to the minds of some people suggest irreverence in dealing with the body after death. The executrix now moved for the exclusion of these words from probate. In her affidavit she said that the words were offensive and objectionable and repugnant to members of the testator's family, and unless omitted from the probate would be broadcast in the press and cause pain to members of the family by being reproduced in the press in the locality where they lived. Counsel for the applicant submitted that non-dispositive portions of a testamentary paper might be excluded from probate if they were scandalous or offensive or libellous, although it had been laid down that such power of exclusion must be exercised with caution.

Lord MERRIVALE, P., directed that a small portion of the passage in the will to which exception had been taken should be excluded from probate.

COUNSEL: *T. Bucknill.*

SOLICITORS: *Bowkers.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

**Hughes** *v.* **Hughes.**

Bateson, J. 23rd March.

DIVORCE—DOMICIL—WIFE'S PETITION—PRIOR PETITION IN EGYPT ALLEGING EGYPTIAN DOMICIL—WITHDRAWAL OF INSTRUCTIONS BEFORE HEARING—FORMER REPRESENTATIVE'S CONDUCT OF CASE NOTWITHSTANDING—RESPONDENT CALLED TO PROVE EGYPTIAN DOMICIL—DECREE BY

EGYPTIAN COURT IN IGNORANCE OF WITHDRAWAL OF INSTRUCTIONS—FACTS PROVING ENGLISH DOMICIL IN REALITY—FOREIGN DECREE INVALID.

In this undefended suit, which raised a question of domicil, a decree had been pronounced in error by an Egyptian Court owing to ignorance that the wife had withdrawn her instructions in the proceedings pending there. In the Egyptian Court the respondent had given evidence of Egyptian domicil. At the first hearing of the present petition on 5th October, 1931, the case was adjourned for production of the record of the Egyptian Court. The facts upon which the petitioner established an English domicil appear sufficiently from the judgment.

BATESON, J., in giving judgment, said that the proceedings in Egypt really amounted to nothing at all because the petitioner had withdrawn all authority from anybody to appear in the courts of that country. The judge at Alexandria had not been informed of that fact, and he proceeded with the suit on the footing that she was represented. As she was not represented and took no part in the case, he (his lordship) did not think that any decision given at Alexandria could possibly affect the present proceedings. That left him free to deal with the case on the ordinary footing. The question was, what was the domicil of the husband? In 1917 the respondent filed a petition here, which was never served on the wife (and was subsequently dismissed), in which he swore that he was domiciled in England. In May, 1930, the wife presented a petition in Egypt alleging that she was domiciled in Egypt, which was supported by her affidavit. On 3rd June, 1930, the wife gave instructions to stop all proceedings in Egypt. but on 20th June, 1930, the man who had been her representative in Egypt up to the time when the instructions were sent, was in court at the hearing. Somebody appeared on behalf of the respondent, although he was not defending the suit, Evidence of adultery was given, and at the end of the case the respondent was put in the witness-box and gave evidence that his domicil was Egyptian. In the present suit the petitioner swore that the respondent's domicil was English. On service of the petition, the respondent raised the point of domicil, but after an order had been made for an issue to be tried, the respondent abandoned the plea and therefore could not be heard now. The conclusion to which he (his lordship) had come, on the whole of the facts, was that the domicil was really English. He was sure that he was giving the petitioner a decree *nisi* in what was the right court. She might be in a very awkward position indeed if she had only had a decree in the Egyptian Court, and wanted to marry again. There would be a decree *nisi* with costs.

COUNSEL: *J. P. Eddy and William Latey* for the petitioner; *Linton Thorp*, K.C., and *Alban Gordon* for the respondent.

SOLICITORS: *Percy Haseldine & Co.; William Webb & Sons.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

## Simcock *v.* Simcock.

Lord Merrivale, P., and Bateson, J. 5th April.

HUSBAND AND WIFE — APPEAL AGAINST FINDING OF PERSISTENT CRUELTY—QUARREL OVER HUSBAND'S ASSOCIATION WITH OTHER WOMAN—VIOLENT ASSAULT BY HUSBAND—SUBSEQUENT SEPARATION OF PARTIES—SECOND ASSAULT BY HUSBAND FOUND IN PRESENCE OF OTHER WOMAN—EVIDENCE SUFFICIENT TO SUPPORT FINDING—APPEAL DISMISSED.

This was the husband's appeal from an order of the Altrincham Justices finding him guilty of persistent cruelty.

The parties were married in 1923. In June, 1931, there was a quarrel over the husband's association with another woman, which led up to a violent assault by the husband upon the wife. The parties were reconciled, but in the following month a further dispute arose between them with regard to the woman, and the husband told the wife to leave. She did so, and in August took out a summons for desertion. That summons was dismissed. In October the wife was in company with her brother when they came upon the husband and the woman in question. The husband then committed a second assault upon the wife. On the wife's application to the justices they made an order on the ground of persistent cruelty.

Lord MERRIVALE, P., in giving judgment, said that if parties were living apart, and there arose acts of violence in reference to some matter apart from the marital relationship, it might have to be considered whether those acts supported a charge of persistent cruelty within the statute, because the statute was no doubt limited to the marital relationship. In the present case, however, the whole matter centred upon the relations of the husband with another woman, and could not be said to be without the ambit of the marital relationship. There was evidence, therefore, before the justices upon which they could reasonably find that the husband had been guilty of persistent cruelty.

BATESON, J., agreed.

COUNSEL: *E. T. Nelson* for the appellant; *F. L. C. Hodson* for the respondent.

SOLICITORS: *Josiah Smith*, Manchester; *Whitfield, Byrne and Dean*, for *Samuel Thompson*, Altrincham.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

## Wilkins *v.* Wilkins.

Lord Merrivale, P. 19th April.

DIVORCE—INDIAN DECREE—REGISTRATION IN ENGLAND—RIGHT OF GUILTY PARTY TO APPLY—INDIAN AND COLONIAL DIVORCE JURISDICTION ACT, 1926 (16 & 17 Geo. 5, c. 40), s. 1, sub-s. (3).

This was an application under the Indian and Colonial Divorce Jurisdiction Act, 1926, to register a decree absolute of divorce pronounced by the Madras High Court.

The applicant was the respondent and the matter was referred to the President owing to a doubt having arisen as to whether such application could be made by the guilty respondent inasmuch as in England a respondent is not entitled to apply to have a decree *nisi* made absolute. Counsel for the applicant submitted that the respondent could apply for and was entitled to such registration. Section 1, sub-s. (3), of the Act provided that on production of a certificate signed by the proper officer of the High Court in India by which the decree was made the decree "shall, if the parties to the marriage are domiciled in England, be registered in the High Court in England," and on such registration the decree should have the same effect as if it had been pronounced in England. The section did not say that it was the petitioner only who could apply for registration.

Lord MERRIVALE, P., in granting the application, said that if some person who was not meddling, but having a real interest in the cause, came to the English court and applied for registration of a decree, on satisfactory evidence of the interest of that party the decree should be registered.

COUNSEL: *T. Bucknill* for the applicant.

SOLICITORS: *Crosse & Sons.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

## TABLE OF CASES previously reported in current volume.

# Parliamentary News.

## Progress of Bills.

## House of Lords.

Birkenhead Corporation Bill.
Read First Time. [10th May.

Bournemouth, Poole and Christchurch Electricity Bill.
Reported, with Amendments. [10th May.

British Museum Bill.
Read First Time. [5th May.

Cambridge Corporation Bill.
Read Second Time. [11th May.

Chester Corporation Bill.
Read Second Time. [11th May.

Epsom College Scheme Confirmation Bill.
Read First Time. [10th May.

Gas Light and Coke Company Bill.
Reported, with Amendments. [10th May.

Kettering Gas Bill.
Read Second Time. [11th May.

Law of Property (Entailed Interests) (No. 2) Bill.
Amendment Reported. [10th May.

London County Council (General Powers) Bill.
Read Second Time. [10th May.

Marriage (Naval, Military and Air Force Chapels) Bill.
Read Second Time. [11th May.

Marriages Provisional Orders Bill.
Reported, without Amendment. [10th May.

North Eastern Electric Supply Bill.
Reported, with Amendments. [10th May.

North Metropolitan Electric Power Supply Bill.
Read Third Time. [10th May.

Oakham Gas and Electricity Bill.
Read First Time. [10th May.

Patents and Designs Bill.
Reported, without Amendment. [10th May.

Rating and Valuation (No. 2) Bill.
Read Second Time. [5th May.

Scarborough Gas Bill.
Reported, with Amendments. [10th May.

Sidmouth Water Bill.
Read Third Time. [5th May.

South Staffordshire Water Bill.
Read Third Time. [10th May.

Southern Railway Bill.
Read First Time. [10th May.

Trent Navigation Bill.
Read Second Time. [11th May.

Walthamstow Corporation Bill.
Commons Amendments agreed to. [10th May.

Warrington Extension Bill.
Read Third Time. [11th May.

Wheat Bill.
Read Third Time. [10th May.

Wolverhampton Corporation Bill.
Reported, with Amendments. [10th May.

York Waterworks Bill.
Read Third Time. [5th May.

## House of Commons.

Birkenhead Corporation Bill.
Read Third Time. [9th May.

Blackpool Improvement Bill.
Reported, with Amendments. [5th May.

Bridgwater Corporation Bill.
Reported, with Amendments. [11th May.

Chesterfield and Bolsover Water Bill.
Read Third Time. [11th May.

Epsom College Bill.
Read Third Time. [9th May.

Finance Bill.
Read Second Time. [10th May.

Gateshead Extension Bill.
Reported, with Amendments. [5th May.

Kendal Corn Rent Bill.
Reported, with Amendments. [5th May.

London United Tramways, Limited (Trolley Vehicles), Provisional Order Bill.
Read First Time. [11th May.

Marriages Provisional Order (No. 2) Bill.
Read First Time. [9th May.

Ministry of Health Provisional Orders (Bridlington and Wells) Bill.
Read First Time. [10th May.

Ministry of Health Provisional Order (River Dee) Bill.
Read First Time. [10th May.

National Health Insurance and Contributory Pensions Bill.
Read Second Time. [11th May.

Newcastle-upon-Tyne Fire Brigade Provisional Order Bill.
Read First Time. [10th May.

North Metropolitan Electric Power Supply Bill.
Read First Time. [10th May.

Oakham Gas and Electricity Bill.
Read Third Time. [10th May.

Rhyl Urban District Council Bill.
Reported, with Amendments. [11th May.

Sea Fisheries Provisional Orders (No. 2) Bill.
Reported, with Amendments. [11th May.

Sheffield Corporation Bill.
Lords Amendments agreed to. [9th May.

Sidmouth Water Bill.
Read First Time. [5th May.

South Lancashire Transport Company (Trolley Vehicles) Provisional Order Bill.
Read First Time. [5th May.

Southern Railway Bill.
Read Third Time. [9th May.

Thames Conservancy Bill.
Read Second Time. [9th May.

Town and Country Planning Bill.
Reported, with Amendments. [10th May.

Warrington Extension Bill.
Read First Time. [11th May.

York Waterworks Bill.
Lords Amendments agreed to. [9th May.

The Solicitors Bill.

The Joint Committee of the House of Lords and the House of Commons which has been considering the Consolidation of Bills (Solicitors) Bill has concluded its task. The Committee found the preamble proved and ordered the Bill to be reported. [11th May.

## Questions to Ministers.

### LAW OF ARBITRATION.

Mr. HARTLAND asked the Attorney-General whether it is the intention of His Majesty's Government to introduce legislation to give statutory effect to the recommendations in the report of the Committee on the Law of Arbitration, under the chairmanship of Mr. Justice Mackinnon, appointed by the late Lord Chancellor, Viscount Cave, which report was presented to Parliament in January, 1927.

Sir A. LAMBERT WARD: I have been asked to reply. My right hon. and learned Friend regrets that it is not possible to introduce legislation to deal with this matter in the present Session. [28th April.

### DIVORCE LAW.

Mr. HUTCHISON asked the Attorney-General whether, as recent cases have shown the necessity for divorce courts to be empowered to enforce maintenance orders by committal, and in view of the fact that when the Debtors Act, 1879, which took away these powers, was passed the divorce court in general only dealt with people of substance, he will consider taking action in the matter.

Captain AUSTIN HUDSON (Lord of the Treasury): My right hon. Friend will consider this matter at the earliest opportunity. [9th May.

### JUDICIAL PROCEDURE.

Mr. KIRKWOOD asked the Attorney-General if he can make any statement to the House as to the advantages which it is hoped will accrue from the changes in judicial procedure recently announced.

The ATTORNEY-GENERAL (Sir Thomas Inskip): The advantages hoped from the changes to which the hon. Member refers are a reduction in the cost and an increase in the speed of litigation in those classes of actions to which the new procedure applies. [11th May.

## Rules and Orders.

THE MATRIMONIAL CAUSES (SOLICITORS' COSTS) RULES, 1932. DATED APRIL 23, 1932.

We, the Rule Committee of the Supreme Court hereby make the following Rules:—

1. Rules 87 and 88 of the Matrimonial Causes Rules, 1924,(*) are hereby revoked and the following Rule which shall stand as Rule 87 shall be substituted therefor:—

"87. In divorce and matrimonial causes costs allowed to solicitors and the taxation of such costs shall be in accordance with the provisions of Order LXV of the Rules of the Supreme Court, as far as the same are applicable thereto, and subject to any provision contained in these Rules."

2.—(1) These Rules may be cited as the Matrimonial Causes (Solicitors' Costs) Rules, 1932, and the Matrimonial Causes Rules, 1924, as amended,(†) shall have effect as further amended by these Rules.

(2) These Rules shall come into operation on the 24th day of May, 1932.

Dated the 23rd day of April, 1932.

| | |
|---|---|
| *Sankey*, C. | *F. H. Maugham*, J. |
| *Hanworth*, M.R. | *D. B. Somervell.* |
| *Merrivale*, P. | *A. W. Cockburn.* |
| *P. Ogden Lawrence*, L.J. | *C. H. Morton.* |
| *A. A. Roche*, J. | *Roger Gregory.* |
| *Rigby Swift*, J. | |

* S.R. & O. 1924 (No. 126) p. 1691. † S.R. & O. 1925 (No. 74) p. 1536.

### ALLIANCE ASSURANCE COMPANY.

At the Annual General Court of the Alliance Assurance Company, Limited, held at the Head Office, Bartholomew-lane, E.C., on Wednesday, the 11th May, the directors declared a dividend of 18s. per share (less income tax) payable in the year 1932 out of the profits and accumulations of the Company at the end of 1931. An interim dividend of 8s. per share (less income tax) was paid in January last, and the balance of 10s. per share (less income tax) will be payable on and after the 5th July next.

Mr. Lionel N. de Rothschild, O.B.E., was re-elected Chairman.

## Legal Notes and News.

### Honours and Appointments.

The King has been pleased, on the recommendation of the Secretary of State for Scotland, to approve the appointment of Mr. SAMUEL MCDONALD, C.M.G., D.S.O., advocate, Sheriff Substitute of Forfar, at Forfar, to be Sheriff Substitute of Lanarkshire, at Hamilton, in place of Mr. JAMES MACDONALD, K.C., appointed to be Sheriff Substitute of the Lothians and Peebles, at Edinburgh.

Sir CHARLES TYRRELL GILES, K.C., has been re-elected Chairman of the Wimbledon and Putney Commons Conservators for the fortieth year.

Mr. K. A. MOORE, solicitor, of Edinburgh, has been appointed Town Clerk of Wick.

Mr. JAMES ROBERTSON, solicitor, has been appointed Clerk to the Justices of the Peace of the County of Caithness in place of the late Mr. G. A. O. Green.

Mr. GEORGE SHIPLEY MCINTIRE, solicitor, Town Clerk of Gloucester, has been appointed Town Clerk of Sunderland.

Mr. J. S. PITMAN, W.S., will resign on 31st July the appointment of Solicitor to the Post Office in Edinburgh, which he has held for forty-two years, and the Postmaster-General has appointed Mr. JOHN RICHARDSON, W.S., of Messrs. Scott Moncrieff & Trail, to succeed him.

The Minister of Health, with the approval of the Prime Minister, has appointed Sir ARTHUR LOWRY, C.B., to act as Deputy Secretary to the Ministry of Health, while Sir ERNEST STROHMENGER, K.B.E., C.B., is seconded for service in the Treasury.

Mr. ROBERT S. RAINFORD, solicitor, of St. Ives, Cornwall, has been appointed Assistant Solicitor to the Uxbridge Urban District Council.

Messrs. Herbert Oppenheimer, Nathan & Vandyk, solicitors, of 1, Finsbury-square, London, find it necessary, in view of misapprehension brought to their knowledge, to state that Mr. Albert M. Oppenheimer, of 31, Queen Victoria-street, London, solicitor, a defendant in the recent *Combined Pulp and Paper Mills Ltd. Case*, has not and never has had any connexion with their firm, of which the partners are Mr. Herbert Oppenheimer, Major H. L. Nathan, M.P., Mr. Arthur Vandyk and Mr. F. T. Smith.

### Professional Announcements.

(2s. per line.)

THE SOLICITORS' MORTGAGE SOCIETY, LTD. (formed by Solicitors for Solicitors), invites particulars of FUNDS or SECURITIES. Apply, The Secretary, 20, Buckingham-street, Strand, W.C.2. Telephone No. Temple Bar 1777.

### NEW PROCEDURE RULES.

The Lord Chancellor, after consultation with the Lord Chief Justice of England, has arranged that the New Procedure List constituted under the Rules of the Supreme Court (New Procedure), 1932, shall be taken by The Honourable Mr. Justice Swift and the Honourable Mr. Justice Macnaghten.

### LOTTERY INQUIRY CHAIRMAN.

Sir Herbert Samuel, the Home Secretary, has invited Sir Sidney Rowlatt to become the chairman of the Royal Commission on Lotteries and Sweepstakes.

### CLOSING OF THE RECORD OFFICE.

The Search Rooms of the Public Record Office will be closed for cleaning from 19th September to 24th September inclusive. Special arrangements will be made for the transaction of urgent legal business.

Mr. Arthur F. Forster, solicitor, of Maidstone, formerly senior partner in the firm of Messrs. Frere, Cholmeley & Co., solicitors, Lincoln's Inn-fields, left £247,784, with net personalty £198,560.

## SUMMER ASSIZES.

### DAYS AND PLACES FIXED.

The days and places fixed for the Summer Assizes, 1932, are :—

OXFORD CIRCUIT (Horridge, J., and Swift, J.).—Saturday, 28th May, at Reading; Friday, 3rd June, at Oxford; Wednesday, 8th June, at Worcester; Saturday, 11th June, at Gloucester; Friday, 17th June, at Monmouth; Thursday, 23rd June, at Hereford; Tuesday, 28th June, at Shrewsbury; Monday, 4th July, at Stafford.

MIDLAND CIRCUIT (Acton, J.).—Saturday, 21st May, at Aylesbury; Wednesday, 25th May, at Bedford; Monday, 30th May, at Northampton; Monday, 6th June, at Leicester; Monday, 13th June, at Oakham; Tuesday, 14th June, at Lincoln; Tuesday, 21st June, at Nottingham; Wednesday, 29th June, at Derby.

McCardie, J.—Monday, 4th July, at Warwick.

McCardie, J., and Swift, J.—Monday, 11th July, at Birmingham.

SOUTH-EASTERN CIRCUIT (Roche, J., and Goddard, J.).—Monday, 23rd May, at Huntingdon; Thursday, 26th May, at Cambridge; Wednesday, 1st June, at Bury St. Edmunds; Tuesday, 7th June, at Norwich; Tuesday, 14th June, at Chelmsford; Tuesday, 21st June, at Hertford; Saturday, 25th June, at Maidstone; Monday, 4th July, at Kingston; Tuesday, 12th July, at Lewes.

NORTH-EASTERN CIRCUIT (Finlay, J., and Macnaghten, J.).—Saturday, 18th June, at Durham; Saturday, 25th June, at Newcastle; Saturday, 2nd July, at York; Thursday, 7th July, at Leeds.

NORTH WALES AND CHESTER CIRCUIT (Talbot, J., and MacKinnon, J.).—Monday, 30th May, at Newtown; Wednesday, 1st June, at Dolgelley; Saturday, 4th June, at Carnarvon; Wednesday, 8th June, at Beaumaris; Saturday, 11th June, at Ruthin; Wednesday, 15th June, at Mold; Saturday, 18th June, at Chester.

SOUTH WALES CIRCUIT (Talbot, J., and MacKinnon, J.).—Monday, 30th May, at Haverfordwest; Monday, 6th June, at Carmarthen; Monday, 13th June, at Brecon; Thursday, 16th June, at Presteign; Saturday, 25th June, at Swansea.

The business at Lampeter, if any, has by Order dated 27th April, 1932, been transferred to Carmarthen under the provisions of s. 77 of the Supreme Court of Judicature (Consolidation) Act, 1925.

NORTHERN CIRCUIT (Hawke, J., and Lawrence, J.).—Monday, 30th May, at Appleby; Thursday, 2nd June, at Carlisle; Tuesday, 7th June, at Lancaster; Saturday, 11th June, at Liverpool; Saturday, 2nd July, at Manchester.

## High Court of Justice.

### WHITSUN VACATION, 1932.

### NOTICE.

There will be no sitting in Court during the Whitsun Vacation.

During the Whitsun Vacation all applications "which may require to be immediately or promptly heard," are to be made to the Honourable Mr. Justice LANGTON.

The Honourable Mr. Justice LANGTON will act as Vacation Judge from Saturday, May 14th, to Monday, May 23rd, 1932, both days inclusive. Applications in urgent matters, during that period, may be made to his Lordship, personally or by post. The Honourable Mr. Justice GODDARD will sit in King's Bench Judges' Chambers on Thursday, May 19th, at 11 o'clock.

When applications are made by post the brief of counsel should be sent to the Judge, by post or rail prepaid, accompanied by office copies of the affidavits in support of the application, and also by a minute, on a separate sheet of paper, signed by counsel, of the order he may consider the applicant entitled to, and also an envelope sufficiently stamped, capable of receiving the papers, addressed as follows :—"Chancery Official Letter: To the Registrar in Vacation, Chancery Registrars' Chambers, Royal Courts of Justice, London, W.C.2."

The papers sent to the Judge will be returned to the Registrar.

The address of the Vacation Judge can be obtained on application at the Chancery Registrars' Chambers, Room 136, Royal Courts of Justice.

Chancery Registrars' Chambers,
Royal Courts of Justice.
May, 1932.

# Stock Exchange Prices of certain Trustee Securities.

**Bank Rate (12th May, 1932) 2½%. Next London Stock Exchange Settlement Thursday, 26th May, 1932.**

| | Middle Price 11 May 1932. | Flat Interest Yield. | Approximate Yield with redemption |
|---|---|---|---|
| **English Government Securities.** | | £ s. d. | £ s. d. |
| Consols 4% 1957 or after | 97¼ | 4 2 3 | — |
| Consols 2½% | 64 | 3 18 1 | — |
| War Loan 5% 1929-47 | 101½xd | 4 18 9 | — |
| War Loan 4½% 1925-45 | 101½xd | 4 8 8 | 4 7 0 |
| Funding 4% Loan 1960-90 | 99¾ | 4 0 3 | 4 0 2 |
| Victory 4% Loan (Available for Estate Duty at par) Average life 30 years | 99¾ | 4 0 3 | 4 0 4 |
| Conversion 5% Loan 1944-64 | 108 | 4 12 7 | 4 10 6 |
| Conversion 4½% Loan 1940-44 | 105 | 4 5 9 | 3 19 4 |
| Conversion 3½% Loan 1961 | 88 | 3 19 6 | — |
| Local Loans 3% Stock 1912 or after | 73½ | 4 1 8 | — |
| Bank Stock | 275 | 4 7 2 | — |
| India 4½% 1950-55 | 90 | 5 0 0 | — |
| India 3½% | 68 | 5 2 11 | — |
| India 3% | 58 | 5 3 5 | — |
| Sudan 4½% 1939-73 | 102 | 4 8 3 | 4 7 10 |
| Sudan 4% 1974 | 96 | 4 3 4 | 4 4 2 |
| Transvaal Government 3% 1923-53 (Guaranteed by British Government.) | 89½ | 3 7 1 | 3 14 10 |
| **Colonial Securities.** | | | |
| Canada 3% 1938 | 93 | 3 4 6 | 4 6 1 |
| Cape of Good Hope 4% 1916-36 | 96 | 4 3 4 | 5 0 6 |
| Cape of Good Hope 3½% 1929-49 | 82½ | 4 4 10 | 5 1 6 |
| Ceylon 5% 1960-70 | 106 | 4 14 4 | 4 13 3 |
| Commonwealth of Australia 5% 1945-75 | 86½ | 5 15 7 | 5 17 4 |
| Gold Coast 4½% 1956 | 101 | 4 9 1 | 4 8 7 |
| Jamaica 4½% 1941-71 | 100 | 4 10 0 | 4 10 0 |
| Natal 4% 1937 | 97 | 4 2 6 | 4 13 9 |
| New South Wales 4½% 1935-45 | 63½ | 7 1 10 | 9 10 2 |
| New South Wales 5% 1945-65 | 69½xd | 7 3 11 | 7 11 0 |
| New Zealand 4½% 1945 | 89½ | 5 0 7 | 5 13 7 |
| New Zealand 5% 1946 | 99 | 5 1 0 | 5 2 1 |
| Nigeria 5% 1950-60 | 106 | 4 14 4 | 4 12 3 |
| Queensland 5% 1940-60 | 77½ | 6 9 1 | 6 16 9 |
| South Africa 5% 1945-75 | 100¼ | 4 19 6 | 4 19 5 |
| South Australia 5% 1945-75 | 80½ | 6 4 3 | 6 6 5 |
| Tasmania 5% 1945-75 | 83½ | 5 19 9 | 6 1 9 |
| Victoria 5% 1945-75 | 77½ | 6 9 1 | 6 11 6 |
| West Australia 5% 1945-75 | 80½ | 6 4 3 | 6 6 5 |
| **Corporation Stocks.** | | | |
| Birmingham 3% on or after 1947 or at option of Corporation | 69 | 4 6 11 | — |
| Birmingham 5% 1946-56 | 105 | 4 15 3 | 4 13 0 |
| Cardiff 5% 1945-65 | 103 | 4 17 1 | 4 16 5 |
| Croydon 3% 1940-60 | 75 | 4 0 0 | 4 12 9 |
| Hastings 5% 1947-67 | 105 | 4 15 3 | 4 14 2 |
| Hull 3½% 1925-55 | 84 | 4 3 4 | 4 13 0 |
| Liverpool 3½% Redeemable by agreement with holders or by purchase | 81 | 4 6 5 | — |
| London City 2½% Consolidated Stock after 1920 at option of Corporation | 60xd | 4 3 4 | — |
| London City 3% Consolidated Stock after 1920 at option of Corporation | 72xd | 4 3 4 | — |
| Metropolitan Water Board 3% "A" 1963-2003 | 72½ | 4 2 9 | — |
| Do. do. 3% "B" 1934-2003 | 74 | 4 1 1 | — |
| Middlesex C.C. 3½% 1927-47 | 89 | 3 18 8 | 4 10 9 |
| Newcastle 3½% Irredeemable | 76 | 4 12 2 | — |
| Nottingham 3% Irredeemable | 69 | 4 6 11 | — |
| Stockton 5% 1946-66 | 103 | 4 17 1 | 4 16 5 |
| Wolverhampton 5% 1946-56 | 104 | 4 16 2 | 4 14 2 |
| **English Railway Prior Charges.** | | | |
| Gt. Western Rly. 4% Debenture | 84½ | 4 14 9 | — |
| Gt. Western Railway 5% Rent Charge | 98½ | 5 1 6 | — |
| Gt. Western Rly. 5% Preference | 62½ | 8 0 0 | — |
| L. Mid. & Scot. Rly. 4% Debenture | 80½ | 4 19 5 | — |
| L. Mid. & Scot. Rly. 4% Guaranteed | 65½ | 6 2 2 | — |
| L. Mid. & Scot. Rly. 4% Preference | 37½ | 10 13 4 | — |
| Southern Railway 4% Debenture | 81½ | 4 18 2 | — |
| Southern Railway 5% Guaranteed | 89½ | 5 11 9 | — |
| Southern Railway 5% Preference | 52½ | 9 10 4 | — |
| *L. & N.E. Rly. 4% Debenture | 71½ | 5 11 11 | — |
| *L. & N.E. Rly. 4% 1st Guaranteed | 56½ | 7 1 7 | — |
| *L. & N.E. Rly. 4% 1st Preference | 31½ | 12 13 11 | — |

*The Prior Charge Stocks of the L. & N.E. Ry. are no longer available for Trustees under the heading of either Strict Trustee or Chancery Stocks as no dividend has been paid on that Company's Ordinary Stocks for the past year.